

1 James Wheaton
2 Lowell Chow
FIRST AMENDMENT PROJECT
1736 Franklin Street, 9th floor
3 Oakland, California 94612
Phone: 510/208-7744
4 Fax: 510/208-4562

5 Mary Lou Boelcke
LAW OFFICES OF MARY LOUISE BOELCKE
6 PO Box 31033
Albuquerque, NM 87190-1033
7 Phone: (505) 804-1632
Fax: (505) 232-9718

8 William Simpich
9 LAW OFFICE WILLIAM SIMPICH
1736 Franklin Street, 10th Floor
10 Oakland, California 94612
Phone: 510/444-0226

11 Attorneys for Plaintiff Philip Mocek

14 UNITED STATES DISTRICT COURT
15 FOR THE DISTRICT OF NEW MEXICO SUPERIOR COURT OF THE STATE OF CALIFORNIA

17 PHILLIP MOCEK,,

18 Plaintiffs,

19 v.

20 CITY OF ALBUQUERQUE,
ALBUQUERQUE AVIATION POLICE
21 DEPARTMENT, MARSHALL KATZ, in
his official capacity as Chief of Police of the
22 Albuquerque Aviation Police Department,
JONATHAN BREEDON, GERALD
23 ROMERO, ANTHONY SCHREINER,
ROBERT F. DILLEY a/k/a BOBBY
24 DILLEY, LANDRA WIGGINS, JULIO DE
LA PENA, and DOES 1-25, inclusive,

No. 1:11-cv-01009-BB-KBM

**TABLE OF AUTHORITIES IN
SUPPORT OF PLAINTIFF'S
OPPOSITION TO DEFENDANTS'
MOTION TO DISMISS**

25 Defendants,

28 **TABLE OF AUTHORITIES:**

| | <u>Cases:</u> | <u>Page:</u> |
|----|--|--------------|
| 1 | <i>Allen v. Wright</i> , 468 U.S. 737(1984) | 22 |
| 2 | <i>Ashcroft v. Iqbal</i> , 556 U.S. at 678 | 16 |
| 3 | <i>Arizona v. Johnson</i> , 555 U.S. 323 (2009) | 12 |
| 4 | <i>Ashcroft v. al-Kidd</i> , 131 S. Ct. 2074 (2011) | 10 |
| 5 | <i>Beard v. City of Northglenn</i> , 24 F.3d 110 (10th Cir. 1994) | 20 |
| 6 | <i>Bell Atl. Corp. v. Twombly</i> , 550 U.S. 544 (2007) | 16 |
| 7 | <i>Bergstrahl v. Lowe</i> , 504 F.2d 1276 (9th Cir.1974) | 17 |
| 8 | <i>Branch v. Tunnell</i> (I), 937 F.2d at 1382 (9 th Cir.)(1991) | 18 |
| 9 | <i>Branzburg v. Hayes</i> , 408 U.S. 665 (1972) | 6 |
| 10 | <i>Caballero v. City of Concord</i> , 956 F.2d 204 (9th Cir.1992) | 18 |
| 11 | <i>Calhoun v. Gaines</i> , 982 F.2d 1470 (10th Cir. 1999) | 14 |
| 12 | <i>Casey v. City of Federal Heights</i> , 509 F.3d 1278 (10th Cir. 2007) | 11 |
| 13 | <i>CBS Inc. v. Young</i> , 522 F.2d 234 (6th Cir. 1975) | 7 |
| 14 | <i>Dellums v. Powell</i> , 566 F.2d 167 (D.C. Cir. 1977) | 6 |
| 15 | <i>DeLoach v. Bevers</i> , 922 F.2d 618 (10th Cir.1990) | 5 |
| 16 | <i>Dombrowski v. Pfister</i> , 380 U.S. 479 (1965) | 22 |
| 17 | <i>First Nat'l Bank v. Bellotti</i> , 435 U.S. 765 (1978) | 6 |
| 18 | <i>Foote v. Spiegel</i> , 118 F.3d 1416 (10th Cir. 1997) | 16 |
| 19 | <i>Fordyce v. City of Seattle</i> , 55 F.3d 436 (9th Cir. 1995) | 11 |
| 20 | <i>Fuller v. M.G. Jewelry</i> , 950 F.2d 1437 (9th Cir.1991) | 20 |
| 21 | <i>Gibson v. United States</i> , 781 F.2d 1334 (9th Cir.1986), cert. denied, 479 U.S. 1054, 107 S.Ct. 928, 93 L.Ed.2d 979 (1987) | 7 |
| 22 | | |
| 23 | | |
| 24 | | |
| 25 | | |
| 26 | | |
| 27 | <i>Gilles v. Davis</i> , 427 F.3d 197 (3d Cir. 2005) | 11 |
| 28 | <i>Glik v. Cunniffe</i> , 655 F.3d 78 (1st Cir. 2011) | 11-13 |

| | | |
|----|---|----------|
| 1 | <i>Globe Newspaper Co. v. Superior Court</i> , 457 U.S. 596 (1982) | 6 |
| 2 | <i>Graham v. Connor</i> , 490 U.S. 386, 109 S.Ct. 1865, 104 L.Ed.2d 443 (1989) | 18 |
| 3 | <i>Green v. Nocciaro</i> , 676 F.3d 748 (8th Cir. 2012) | 20 |
| 4 | <i>Hodge v. Lynd</i> , 88 F. Supp. 1232 (D. N.M. 2000) | 17 |
| 5 | <i>Houchins v. KQED, Inc.</i> , 438 U.S. 1, 11 (1978) | 6 |
| 6 | <i>Hudgens v. NLRB</i> , 424 U.S. 507, 96 S.Ct. 1029 147 L.Ed.2d 196 (1976) | 13 |
| 7 | <i>Hunter v. Bryant</i> , 502 U.S. 224, 112 S.Ct. 534, 116 L.Ed.2d 589 (1991) | 20 |
| 8 | <i>Iacobucci v. Boulter</i> , 193 F.3d 14 (1st Cir. 1999) | 11 |
| 9 | <i>Kelly v. Borough of Carlisle</i> , 622 F.3d 248 (3d Cir. 2010) | 11-13 |
| 10 | <i>Klen v. City of Loveland</i> , 661 F.3d 498 (10th Cir. 2011) | 5 |
| 11 | <i>Lackey v. County of Bernalillo</i> , 1999 WL 2461, at 3 | 8 |
| 12 | <i>Laird v. Tatum</i> , 408 U.S. 1 (1972) | 22 |
| 13 | <i>Lambert v. Polk Co.</i> , 723 F. Supp. 128 (S.D. Iowa 1989) | 7 |
| 14 | <i>Lee v. Gregory</i> , 363 F.3d 931 (9th Cir. 2004) | 13 |
| 15 | <i>Melear v. Spears</i> , 862 F.2d 1177 (5th Cir. 1989) | 19 |
| 16 | <i>Meese v. Keene</i> , 481 U.S. 465 (1987) | 22 |
| 17 | <i>Mendocino Environmental Center v. Mendocino County</i> , 14 F.3d 457 (9th Cir. 1994) | 13,18,19 |
| 18 | <i>Northington v. Marin</i> , 102 F.3d 1564 (10th Cir. 1996) | 18 |
| 19 | <i>Richmond Newspapers, Inc. v. Virginia</i> , 448 U.S. 555 (1980) | 6 |
| 20 | <i>Romero v. Fay</i> , 45 F.2d 1472 (10th Cir. 1995) | 18, 20 |
| 21 | <i>Secretary of State of Maryland v. Joseph H. Munson Co.</i> , 467 U.S. 947 (1984) | 21 |
| 22 | <i>Sloman v. Tadlock</i> , 21 F.3d 1462 (9th Cir. 1994), infra. | 5, 13 |
| 23 | <i>Smith v. City of Cumming</i> , 212 F.2d 1332 (11th Cir. 2000) | 7 |
| 24 | <i>Smith v. United States</i> , 561 F.3d 1090 (10th Cir. 2009) | 2, 11 |

| | | |
|----|---|--------|
| 1 | <i>Snell v. Tunnell</i> , 920 F.2d 673 (10th Cir.1990), cert. denied, 499 U.S. 976 (1991) | 17 |
| 2 | <i>Szymecki v. Houck</i> , 353 F. App'x 852 (4th Cir. 2009) | 6 |
| 3 | <i>Thomas v. Carpenter</i> , 881 F.2d 828 (9th Cir.1989) cert. denied, 494 U.S. | |
| 4 | 1028, 110 S.Ct. 1475, 108 L.Ed.2d 612 and cert. denied, 497 U.S. 1003, | |
| 5 | 110 S.Ct. 3236, 111 L.Ed.2d 747 (1990) | 7 |
| 6 | <i>Tobey v. Napolitano</i> , 808 F. Supp. 2d 830 (E.D. Va. 2011) | 19 |
| 7 | <i>United States v. Dickinson</i> , 465 F.2d 496 (5th Cir. 1972) | 17 |
| 8 | <i>United States v. Hensley</i> , 469 U.S. 221, 105 S.Ct. 675, 83 L.Ed.2d 604 (1985) | 19 |
| 9 | <i>United States v. Moore</i> , 483 F.2d 1361 (9th Cir.1973) | 17 |
| 10 | <i>United States v. Sherman</i> , 581 F.2d 1358 (9th Cir. 1978) | 6 |
| 11 | <i>Whiteley v. Warden</i> , 401 U.S. 560, 91 S.Ct. 1031, 28 L.Ed.2d 306 (1971) | 19 |
| 12 | <i>Worrell v. Henry</i> , 219 F.3d 1197 (10th Cir. 2000) | 5, 8 |
| 13 | <i>Wright v. Georgia</i> , 373 U.S. 284, 83 S.Ct. 1240, 10 L.Ed.2d 349 (1963) | 17, 22 |
| 14 | <i>York v. City of Las Cruces</i> , 523 F.3d 1205 (10th Cir. 2008) | 10 |
| 15 | <u>Codes:</u> | |
| 16 | 18 U.S.C. § 111 | 17 |
| 17 | 42 USC §1983 | 18, 21 |
| 18 | FRCP 12(b)(6) | 3 |
| 19 | | |
| 20 | | |
| 21 | | |
| 22 | | |
| 23 | | |
| 24 | | |
| 25 | | |
| 26 | | |
| 27 | | |
| 28 | | |